



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

GSA BULLETIN FPMR NO. A-9
GENERAL
ATTACHMENT A

B-157587

March 1, 1966

Dear Mr. Knott:

The Acting Administrator, General Services Administration (GSA), by letter of November 1, 1965, requests our consideration of a proposed procedure whereby the Government would purchase presently leased International Business Machines (IBM) punched-card and automatic data processing (ADP) equipment through the agency of and by use of the funds of a third party leasing firm, then lease the same equipment back from the leasing firm at considerably reduced rates than those presently being paid to IBM.

The background and facts in the matter, as contained in the Acting Administrator's letter, are set forth below.

Several leasing firms have offered leasing proposals to the Government which would produce savings of from ten to fifty percent of present IBM lease rates on punched-card and ADP equipment. These firms are Boothe Leasing Corporation, mainly a computer leasing firm; Data Processing Associates, Inc. (DPA), interested only in punched-card equipment; and Management Assistance, Inc. (MAI), interested chiefly in punched-card equipment, but would also agree to lease-back arrangements for selected pieces of ADP equipment. All of these firms have come into existence after manufacturers started making punched-card and ADP equipment available for purchase. Since General Services Administration has statutory responsibility to manage and procure Government property for civilian agencies of the Government, it is very much interested in the cheaper rates that are being offered by the leasing firms, since Government-wide savings of several million dollars per year could be realized immediately from these proposals.

IBM has a firm policy of selling installed equipment only to the lessee, and it has refused to modify that position, although GSA has for almost two years tried vigorously and at different levels in the corporation management to get that policy changed. Because of this IBM policy, the proposals of the leasing firms--all essentially the same--involve: (1) the Government's exercising, pursuant to the terms of the Federal Supply Schedule contract with IBM, its nonassignable option to purchase presently leased IBM punched-card and selected pieces of ADP equipment, the purchase to be consummated through the Government's appointing the leasing firm as its agent to purchase the equipment, (2) the leasing firm's using its own funds to pay IBM directly for the purchased equipment and taking title to it as agent of the

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Government, and (3) the Government's releasing to the leasing firm the title to the equipment and any equity acquired towards its purchase price, in exchange for a lease agreement at very much lower leasing rates than those charged by IBM.

In this proposed procedure, the Government would require the leasing firm to agree to grant the Government at least as many rights as the IBM lease agreements now provide. These rights would include a purchase option as provided by IBM (part of the lease price being applied towards purchase of the equipment if the Government later decided to buy), 30 or 60 days unilateral cancellation rights, and IBM or equivalent maintenance on all equipment, with automatic termination provisions being included if the leasing firms failed to provide IBM or other adequate maintenance. Other leasing terms offered by some of the firms are better than those now offered by IBM, such as allowance for prime shift time, overtime usage rates, insurance, warranties against interruption of service, and, no delivery and installation costs. GSA would also require a leasing firm to guarantee continuation of the lease for as long as the Government may wish.

GSA believes that it would be entirely possible to obtain vigorous competition among the three companies mentioned above and any other interested firms, in making this improved kind of lease; and would obtain all possible competition in any such arrangement.

As an example of the kind of proposals suggested to GSA by the leasing companies, DPA recently made an offer to the Veterans Administration (VA) whereby DPA would purchase certain punched-card equipment which the VA plans to continue to rent for uncertain periods of time in the future. DPA would purchase, as agent of the Government, the equipment at the discounted IBM sale price of \$2,654,066, and lease it back to VA for \$97,394.80 per month. The current IBM monthly rental of the same equipment is \$121,743.50. The reduced monthly rental would amount to \$24,348.70 or \$292,184.40 per year. These reduced rates amount to approximately 80 percent of the present IBM rates.

Also as an example of the type of savings that could be realized, recently Boothe bid on and was awarded the Federal Bureau of Investigation contract for lease of an IBM central processor for a total monthly rental of \$1,450. The IBM lease rate for the same model processor was \$3,000 per month, which meant savings to the FBI of over 50 percent. This procurement did not involve the issues discussed herein, however, since Boothe leased to the FBI equipment that Boothe already owned.

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The Federal Supply Service receives billing reports and keeps records concerning all agencies ordering punched-card equipment under the FSS Schedule Contract. These records indicate that the Government presently pays annually approximately \$60 million for lease of punched-card equipment from IBM and Univac, which are the only manufacturers of punched-card equipment. (Of the \$60 million, approximately \$55 million is leased from IBM and the other \$5 million from Univac). Also, the Bureau of the Budget "Inventory of Automatic Data Processing Equipment in the Federal Government," June 1965 (see pp. 11-21), indicates that in the ADP equipment area, the fiscal year 1965 computer rentals were in excess of \$200 million. If it is assumed that a lease-back of only half of the presently leased punched-card and ADP equipment would be of interest to a leasing company, and if it is assumed further, conservatively, that the savings the Government would realize from a lease-back arrangement with a leasing company would be only ten percent of the Government's present leasing costs, nevertheless, the savings to the Government would on these assumptions be approximately \$3 million annually for punched-card equipment and as much as \$10 million annually for ADP equipment.

The Acting Administrator emphasizes that the proposal is limited to the specific and highly unusual circumstances which are encountered here. He strongly feels that the Government should not be debarred from taking advantage of the highly favorable leasing terms which are available from the leasing companies, so long as the basis for doing so may be found in the general authority under the Federal Property and Administrative Services Act of 1949, as amended, for GSA to manage the Government's property, and so long as other provisions of law are not violated. Further, he believes there is an entirely adequate flexibility in Federal law to permit the Government to act in the interests of economy and efficiency in this particular and unusual factual situation.

The Acting Administrator states that GSA does not foresee a problem in the later transfer of title from the Government to the leasing firm, since the whole transaction would be in the best interest of the Government, and that the Government's consideration for the transaction would be the lower rates and other improved terms under the subsequent leases from the leasing firms.

Accordingly, he would like to be assured that we would not feel compelled to disapprove a plan whereby the Government would first make an inventory of all agencies to determine what equipment might be subject to a continuing lease, and then, after individual agency determinations that it would be more advantageous to the Government to continue leasing the various equipment involved rather than purchase, would:

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1. Get competitive offers from all the leasing firms;
2. Evaluate offers to determine best proposals;
3. Appoint successful offeror as agent of the Government to purchase equipment directly from IBM, using funds of the offeror and not funds appropriated to the agencies;
4. Draw up an agency agreement with leasing firms, together with a separate agreement relating to the lease-back arrangement; and
5. Lease the equipment back from leasing firms at lower rates with provisions for 30 to 60 days cancellation, right to purchase at reduced rates, maintenance requirements, and any other advantageous terms which are reasonably available from the leasing firms.

Although IBM will not relax its selling policy and has repeatedly stated that it will not sell installed equipment at the reduced purchase price to anyone but the lessee, GSA has approached IBM with the agency proposal, and IBM has indicated that it would agree to such an arrangement, especially since it was brought to the Company's attention that arrangements like the one proposed above have been accomplished with private businesses.

In the absence of more specific statutory authority, GSA proposes to handle the matter under the general authority of section 201(a) of the Federal Property and Administrative Services Act, as amended, 40 U.S.C. 481. This section provides, in pertinent part, as follows:

"The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned--

"(1) prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and

* * * * *

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"(3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1) * * *."
(Emphasis added.)

Under the proposed procedure the option to purchase would have to be exercised in the name of the Government and once this option was exercised the legal title to the equipment would vest in the Government. Government-owned equipment ordinarily may be disposed of only when it becomes surplus to the needs of the Government and in accordance with the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471 et seq. Since there would remain a Government need for the equipment it properly could not be considered to be surplus. However, while under the proposed procedure and the agreements to be entered into legal title to the equipment would be in the Government, when the option was exercised it appears that equitable title would be in the third party leasing firm, since its funds would be used to purchase the property and, under the agreements between the third party leasing firm and the Government, the Government would be required to transfer title to the third party leasing firm. Under the circumstances it appears reasonable to consider the purchase, transfer of title, and lease-back of the equipment, a single transaction accomplished as a method of procurement and resorted to solely for the purpose of enabling the leasing firm to acquire the equipment so it may lease it to the Government at a lower rental than the Government was previously paying, and not a procurement for the purpose of vesting title to the equipment in the Government. Cf. B-69813, December 8, 1947. In view thereof and considering the unusual circumstances we would not be required in the instant case to consider the equipment involved as Government property. If the equipment is not considered to be Government property, there is nothing in the Federal Property and Administrative Services Act of 1949, as amended, or other law, of which we are aware, which would preclude GSA from carrying out the proposed procedure.

As indicated above, under the terms of the Federal Supply Schedule Contract with IBM, the Government's option to purchase leased punched-card and selected pieces of ADP equipment is nonassignable. The proposed procedure would have the effect of circumventing the nonassignable option to purchase provision in the Federal Supply Schedule Contract (or contracts) involved. While it is stated in the Acting Administrator's letter that IBM has indicated it would agree to the proposed

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procedure, there is nothing in the letter to indicate the authority of the IBM officials contacted to make such a commitment. If, however, responsible officials of IBM (i.e. those who have authority to waive contract provisions such as involved here) have been or are contacted and agree to the proposed procedure set forth in the Acting Administrator's letter we will interpose no legal objection to such procedure.

We are in agreement with the objective of conserving public funds by acquiring the use of ADP equipment under more favorable terms. However, aside from the legal question involved, we would like to call your attention to our numerous reports to the Congress in recent years on our examinations of the acquisition of ADP equipment by Government agencies and contractors and the additional costs incurred as a result of the practice of leasing as opposed to purchasing. Concerning the present proposal for obtaining more favorable leasing terms, it should be understood that we believe that your agency should exercise its full authority to determine the most economical method of acquisition of ADP equipment from an overall Government standpoint, whether by lease or purchase, and to arrange for its acquisition accordingly.

In this connection, we note from the Acting Administrator's letter (page 6) that:

"Accordingly, we would like to be assured that you would not be compelled to disapprove a plan whereby the Government would first make an inventory of all agencies to determine what equipment might be subject to a continuing lease, and then after individual agency determinations continue leasing the various equipment involved rather than purchase." (Underscoring added.)

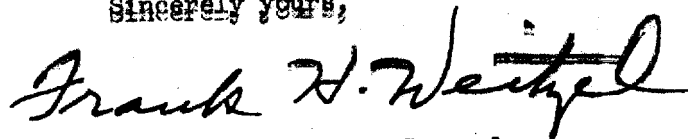
This statement suggests that GSA intends to continue to rely on the determinations of the agencies as to whether to lease or purchase equipment. Based on examinations we have made in many agencies, it is our observation that decisions to lease or purchase data processing equipment made by individual agencies, who usually have little or no knowledge of the needs of other agencies, very often result in leasing when the best interests of the Government would be served by purchasing. It is our view that such determinations can best be made by a centralized authority having knowledge of the needs of all agencies. Recognition of this concept was a factor in the enactment of Public Law 89-306 which authorizes and directs the Administrator, GSA, to coordinate and provide for the economic and efficient acquisition and maintenance of ADP equipment by Federal agencies. In carrying out this responsibility,

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[we urge that full consideration be given to making lease-purchase determinations on the basis of overall interests of the Government whether the equipment is acquired from manufacturers or from others.]

As requested there is returned herewith the DPA proposal (three brochures).

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures

The Honorable Lawson B. Knott, Jr.
Administrator, General Services
Administration

GSA BULLETIN FPMR NO. A-9
GENERAL
ATTACHMENT B

LEASING COMPANIES
(Partial List)

American Business Machines, Inc.
573 Broadway
New York, New York 10012

Approved Business Machines Co.
16 Hudson Street
New York, New York 10013

Armor Company (The)
303 West 42 Street
New York, New York 10036

Automation Company (The)
342 Madison Avenue
New York, New York 10017

Computer Leases
18 Dennis Drive
New Rochelle, N. Y. 10804

Computermart, Inc.
236 Fifth Avenue
New York, New York 10001

Computer World Trade Corporation
20 North Wacker Drive
Chicago, Illinois 60606

Cyber-Tronics, Inc.
915 Broadway
New York, New York 10010

D. H. Overmyer Leasing Company
201 East 42 Street
New York, New York 10017

Data Processing Associates
2636 Farrington Street
Dallas, Texas 75207

Data Processing Financial & General Corp.
575 Lexington Avenue
New York, New York 10022

Datronc Rental Corporation
185 North Wabash Avenue
Chicago, Illinois 60601

Electronic Computer Sales
Organization
40 Wall Street, N. Y., N. Y. 10005

EDP Leasing Company
745 - 5th Avenue
New York, New York 10022

Financial Leasing Company
1255 Boylston Street
Boston, Massachusetts 02130

Gene Maior & Associates
138 Nepperhan Avenue
Yonkers, New York 10701

Global Tab Equipment Corporation
1229 West Washington Boulevard
Chicago, Illinois 60607

Greyhound Leasing and Financial
Corporation
445 Park Avenue, N. Y., N. Y. 10022

International Data Products
330 Grant Street
Pittsburg, Pennsylvania 15219

International Data Products, Inc.
PO Box 1207
Kansas City, Missouri 64141

International Office Appliances, Inc.
383 Lafayette Street
New York, New York 10003

L. A. Pearl Company
801 Second Avenue
New York, New York 10017

L. M. C. Data, Inc.
Leasotronic
116 East 27th Street
New York, New York 10016

Management Assistance, Inc.
300 East 44th Street
New York, New York 10017

Nationwide Office Machines, Inc.
31 East 32 Street
New York, New York 10016

Randolph Computer Corporation
200 Park Avenue,
New York, New York 10017

United States Leasing Corporation
633 Battery Street
San Francisco, California 94111

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Approved For Release 2003/04/29 : CIA-RDP84-00780R001300060040-0

ROUTING AND RECORD SHEET D / S R E G I S T R A R

SUBJECT: (Optional)

FILE 07M.2-2110P

GSA Bulletin on Automatic Data Processing Equipment

FROM:

Joseph Becker
Director of Computer Services

NO.

DD/S 46-1629

DATE

24 March 1966

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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FORWARDED

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Attention:

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The attached was forwarded to OCS by GSA.

It is for the information of your computer personnel and does not require Agency action at this time. However, it indicates an increasing need for Agency-wide ADP equipment control in order to make rent/lease-back/purchase decisions, etc. wisely and to cooperate appropriately with Government-wide ADP policies.